No. 93-73

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1993

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.,
PETITIONERS

v.

LEGALIZATION ASSISTANCE PROJECT OF LOS ANGELES
COUNTY FEDERATION OF LABOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

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1. The first two questions presented by the certiorari petition (Pet. 5-6) are substantially identical to the two questions before the Court in *Reno* v. *Catholic Social Services, Inc.*, 113 S. Ct. 2485 (1993) (*CSS*). Respondents offer no basis for supposing that the decision in *CSS* does not at least undermine the court of appeals' analysis of those questions, especially since the court of appeals in this case relied on its own prior decision in the *Catholic Social Services* case (since reversed by this Court). See Pet. App. 5a-6a, 36a-37a. Rather, respondents argue (Br. in Opp. 12-15) that the Court should not vacate the challenged judgment of the court of appeals because of the

existence of proceedings in the district court on remand from the decision of the court of appeals. That argument should be rejected, because it will be likely to cause further delay in the ultimate resolution of this protracted litigation. If this Court does not require the court of appeals to reconsider its decision at this time, it is possible that the court of appeals will not do so until the district court renders a final judgment resolving all issues before it, which could be several years from the present time. Because this Court already has examined the relevant questions in its decision in *CSS*, there is no basis for allowing the judgment of the court of appeals to continue in existence as the operative law of the Ninth Circuit on those questions.[1]

2. Respondents also argue (Br. in Opp. 15-22) that there is no need for the Court to direct the court of appeals to reconsider its holding that the organiza-

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[1] Respondents state (Br. in Opp. 13 n.11) that they are "optimistic" that settlement discussions will "obviate the need for any further district court proceedings in this case." Although we consider it inappropriate to offer the Court our opinion of respondents' off-the-record settlement proposal, it is clear that respondents have not refrained from pressing forward with the litigation in the courts below, as evidenced by the wide-ranging interim relief sought by respondents and reaffirmed by the district court in this case even after *CSS*. The burdens imposed by that relief induced the government to seek a stay of the relief in this Court on November 17, 1993. Justice O'Connor granted an interim stay of that relief on November 18, 1993. *Immigration and Naturalization Service* v. *Legalization Assistance Project*, No. A-426. Hence, we have no reason to believe that respondents' interest in settling this case will vitiate the concrete interests of the government in securing reconsideration of the Ninth Circuit's decision at the earliest possible time.

tional respondents have standing to seek injunctive relief requiring the Immigration and Naturalization Service (INS) to grant legalization-related relief to individual applicants. Respondents, however, ignore the thrust of our petition on that point (Pet. 6-9). They do not even attempt to explain why Congress conceivably could have intended for organizations whose role under IRCA was limited to disseminating information about the legalization program and receiving applications for forwarding to the Attorney General (see 8 U.S.C. 1255a(c)(1) and (i)) to have a distinct, legally cognizable stake in the manner in which individual applications are adjudicated after they are received by the Attorney General—much less to have broader rights to judicial review than the sharply demarcated right of judicial review Congress granted to the individual beneficiaries of the legalization provisions. Nor have respondents explained why any injury to an organization's own interests that allegedly resulted from the INS's administration of IRCA during the application period that closed five years ago properly could be remedied by an injunction ordering the INS at this time to grant relief to a broad class of individual aliens who are not before the court in this case.[2]

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[2] Respondents err in asserting (Br. in Opp. 12) that individual aliens who could show they were "front-desked" would be entitled to have the district court resolve their substantive challenges to particular aspects of the INS's interpretation and implementation of IRCA's legalization provisions. The INS has taken the position that if any alien actually was "front desked" (*i.e.*, submitted an application during the one-year application period but had it rejected out of hand because he was thought to be ineligible on one of the grounds challenged in this case)—

Furthermore, whatever the merits of the question, the decision of the court of appeals on the organizational standing issue conflicts squarely with the recent decision of the District of Columbia Circuit in *Ayuda, Inc.* v. *Reno*, Nos. 88-5226, 90-5293 & 89-5301 (Oct. 26, 1993). The *Ayuda* decision, rendered on remand from this Court's decision in *CSS*, see 113 S. Ct. 3026 (1993), specifically held that organizational plaintiffs have no greater right to pursue relief under the legalization provisions of IRCA than individual aliens themselves:

> [I]t is now quite clear, in light of the *CSS* analysis, that the organizations did not have standing to raise their claims challenging INS policies or

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and there has been no such showing by any alien in the district court—he would be regarded as having "appl[ied]" for legalization within the meaning of 8 U.S.C. 1255a(a)(1) and would be entitled to have his application adjudicated on the merits by the INS in the same manner as any other applicant. See also *CSS*, 113 S. Ct. at 2500 n.29; *CSS*, Gov't Reply Br. 13-14 (same). If the application then was denied, the exclusive means for obtaining judicial review of the INS's denial (and any statutory interpretation on which it was based) would be in the court of appeals, on judicial review of an order of deportation. Accordingly, the only relief available in the district court to an individual who established that he had been "front desked" would be an order requiring the INS to adjudicate his application in the same manner as that of any other applicant, see 113 S. Ct. at 2497, 2500 n.29—relief that is unnecessary in light of the INS's willingness to do just that, as described above. The district court would have no authority (or occasion) to grant any other relief (including any extension or waiving of the statutory deadline, see 8 U.S.C. 1255a(f)(2); 113 S. Ct. at 2497 n.20) to individual plaintiffs. A fortiori it may not do so in a suit brought by organizations.

> regulations that interpreted aliens' rights to legalization under IRCA. That is so because, as the Court reasoned, these claims may only be brought in court by individual aliens after the INS' statutory interpretation is applied to them, their application for legalization is denied, and they are subject to deportation orders. It follows then, that an organizational plaintiff could not undermine the statutory scheme by suing to challenge "generic" INS policies or statutory interpretations that bear on an alien's right to legalization.

Slip op. 9-10.

In sum, although we believe that it was inappropriate for the Ninth Circuit to conclude that the organizational respondents had standing even under the Ninth Circuit's law as it existed before *CSS*, this Court's opinion in *CSS* exposes the anomaly and unacceptable practical consequences of the Ninth Circuit's ruling. Because the Ninth Circuit did not have an opportunity to consider this Court's opinion in *CSS* when it granted broad relief to individual aliens at the behest of organizations that have no cognizable stake in the resolution of individual applications for legalization, it would be appropriate for this Court to remand the case to the Ninth Circuit to give it an opportunity to correct the error itself. The D.C. Circuit in *Ayuda*, for example, found *CSS* dispositive in holding that organizations may not obtain broad injunctive relief in the district courts. By contrast, if (as respondents argue below) the Court's decision in *CSS* would not be directly relevant to consideration of the organizational standing issue in this case in the ongoing proceedings in the

district court and the court of appeals, the existence of the circuit conflict created by the *Ayuda* decision would justify review by the Court of the question at this time. Unlike respondents, however—and like the D.C. Circuit in *Ayuda*—we believe that this Court's decision in *CSS* underscores the impropriety of the relief entered below.

3. With respect to the availability of relief for the Section 265 claimants, respondents argue (Br. in Opp. 22-26) that it is unlikely that the court of appeals will grant any deference to the administrative interpretation that the INS has issued since the time the court of appeals initially decided the question. See *Matter of H* (INS Assoc. Comm'r for Exams, June 11, 1993), discussed at Pet. 9-10. But that likelihood offers no basis for denying the petition. Congress has entrusted the administration and interpretation of the Act to the Attorney General and her agents. The court of appeals' decision interpreting the Act wholly failed to take account of the Attorney General's authoritative resolution of the same question. That failure is understandable—because the Attorney General resolved the question after the court of appeals ruled—but it does not undermine the propriety of requiring the court of appeals to consider the correctness of the Attorney General's interpretation, along with the other issues open on remand.

4. Respondents argue (Br. in Opp. 27-29) that there is no need to order the court of appeals to reconsider its holding that certain regulations promulgated by the Attorney General violate the equal protection component of the Due Process Clause of the Fifth Amendment. Respondents' argument that the decision is correct—which consists of a conclusory

assertion that there is no rational basis for the distinctions drawn by the agency—cannot be reconciled with this Court's repeated statements last Term that a classification "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Heller* v. *Doe*, 113 S. Ct. 2637, 2642 (1993) (quoting *FCC* v. *Beach Communications, Inc.*, 113 S. Ct. 2096, 2101 (1993)). For the reasons outlined in the certiorari petition (at 11-15), it is entirely clear that a reasonably conceivable state of facts could provide a rational basis for the classification.

The court of appeals has taken the dramatic step of holding that agency regulations that are based directly on the complicated provisions of the Immigration Reform and Control Act of 1986 are so irrational that they transgress constitutional bounds. We did not seek plenary review in the Court at this juncture because of the possibility that the court of appeals would reconsider its cursory equal protection analysis in light of this Court's rejection of similar challenges last Term. That possibility justifies giving the court of appeals an opportunity to correct its error in the first instance.

Of course, if (as we submit above) the courts below had no authority to award injunctive and declaratory relief regarding the implementation of IRCA in a suit brought by organizations, the district court's original (and more recent) awards of relief must be reversed on that ground alone. In that event, there would be no occasion for the Ninth Circuit to reach the merits of respondents' substantive challenges. For that reason, it is especially appropriate for the Court to

vacate the judgment below and remand for further consideration in light of *CSS*, just as the Court did in *Ayuda*.

For the foregoing reasons and those set forth in the petition, the petition for a writ of certiorari should be granted, the judgment of the court of appeals should be vacated, and the case should be remanded for further consideration in light of this Court's decisions in *Reno* v. *Catholic Social Services, Inc.*, 113 S. Ct. 2485 (1993); *Heller* v. *Doe*, 113 S. Ct. 2637 (1993); *FCC* v. *Beach Communications, Inc.*, 113 S. Ct. 2096 (1993); as well as the decision of the Associate Commissioner of INS for Examinations in *Matter of H* (June 11, 1993).

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

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